

US EPA ARCHIVE DOCUMENT

APPENDIX 3

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS

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NOTE: Some states do not allow some of the exemptions and exclusions on this listing, so some of the listed exclusions or exemptions may not be available at your facility.

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REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§260.22	Delisted hazardous waste	<p>§260.22(a) Any person seeking to exclude a waste at a particular generating facility from the lists in subpart D of part 261 may petition for a regulatory amendment under this section and §260.20. To be successful:</p> <ol style="list-style-type: none"> (1) The petitioner must demonstrate to the satisfaction of the Administrator that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and (2) Based on a complete application, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of subpart C of part 261.
§3001(f)		<p>§3001(f)(1) When evaluating a petition to exclude a waste generated at a particular facility from listing under this section, the Administrator shall consider factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. The Administrator shall provide notice and opportunity for comment on these additional factors before granting or denying such petition.</p> <ol style="list-style-type: none"> (2)(A) To the maximum extent practicable the Administrator shall publish in the Federal Register a proposal to grant or deny a petition referred to in paragraph (1) within twelve months after receiving a complete application to exclude a waste generated at a particular facility from being regulated as a hazardous waste and shall grant or deny such a petition within twenty-four months after receiving a complete application. (B) The temporary granting of such a petition prior to November 8, 1984, without the opportunity for public comment and the full consideration of such comments shall not continue for more than twenty-four months after November 8, 1984. If a final decision to grant or deny such a petition has not been promulgated after notice and opportunity for public comment within the time limit prescribed by the preceding sentence, any such temporary granting of such petition shall cease to be in effect.

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§261.3(a)(2)(i)	Mixture of solid waste (or excluded Bevill waste) and characteristic waste	<p><i>§261.3(a) A solid waste, as defined in §261.2, is a hazardous waste if:</i></p> <p><i>(2) It meets any of the following criteria:</i></p> <p><i>(i) It exhibits any of the characteristics of hazardous waste identified in subpart C except that any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under §261.4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under subpart C of this part only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I to §261.24 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.</i></p>
§261.3(a)(2)(iii)	Mixture of solid waste and hazardous waste listed solely because it exhibits a characteristic	<p><i>§261.3(a) A solid waste, as defined in Sec. 261.2, is a hazardous waste if:</i></p> <p><i>(2) It meets any of the following criteria:</i></p> <p><i>(iii) It is a mixture of a solid waste and a hazardous waste that is listed in subpart D of this part solely because it exhibits one or more of the characteristics of hazardous waste identified in subpart C of this part, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in subpart C of this part, or unless the solid waste is excluded from regulation under Sec. 261.4(b)(7) and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in subpart C of this part for which the hazardous waste listed in subpart D of this part was listed. (However, nonwastewater mixtures are still subject to the requirements of part 268 of this chapter, even if they no longer exhibit a characteristic at the point of land disposal).</i></p>
§261.3(a)(2)(iv)	Mixture of solid waste and hazardous waste discharging to a Clean Water Act system	<p><i>§261.3(a) A solid waste, as defined in Sec. 261.2, is a hazardous waste if:</i></p> <p><i>(2) It meets any of the following criteria:</i></p> <p><i>(iv) It is a mixture of solid waste and one or more hazardous wastes listed in subpart D of this part and has not been excluded from paragraph (a)(2) of this section under Secs. 260.20 and 260.22 of this chapter; however, the following mixtures of solid wastes and hazardous wastes listed in subpart D of this part are not hazardous wastes (except by application of paragraph (a)(2) (i) or (ii) of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and:</i></p>

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§261.3(a)(2)(iv)(A)	Mixture of solid waste and hazardous spent solvent wastes discharging to a Clean Water Act system	(A) One or more of the following solvents listed in Sec. 261.31-- carbon tetrachloride, tetrachloroethylene, trichloroethylene-- Provided, That the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million;
§261.3(a)(2)(iv)(B)	Mixture of solid waste and hazardous spent solvent wastes discharging to a Clean Water Act system	(B) One or more of the following spent solvents listed in Sec. 261.31--methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents--provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million;
§261.3(a)(2)(iv)(C)	Mixture of solid waste and K050 discharging to a Clean Water Act system	(C) One of the following wastes listed in Sec. 261.32--heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050);
§261.3(a)(2)(iv)(D)	Mixture of solid waste and <i>de minimis</i> quantities of hazardous commercial chemical products discharging to a Clean Water Act system	(D) A discarded commercial chemical product, or chemical intermediate listed in Sec. 261.33, arising from <i>de minimis</i> losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this paragraph (a)(2)(iv)(D), "de minimis" losses include those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing;
§261.3(a)(2)(iv)(E)	Mixture of solid waste and hazardous lab wastes discharging to a Clean Water Act system	(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in subpart D of this part, Provided, That the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation;

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§261.3(a)(2)(iv)(F)	Mixture of solid waste and K157 wastewaters discharging to a Clean Water Act system	(F) One or more of the following wastes listed in Sec. 261.32--wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)--Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight;
§261.3(a)(2)(iv)(G)	Mixture of solid waste and K156 wastewaters discharging to a Clean Water Act system	(G) Wastewaters derived from the treatment of one or more of the following wastes listed in Sec. 261.32--organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156)--Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.
§261.3(c)(2)(ii)	Excluded wastes derived from hazardous waste	§261.3(c) <i>Unless and until it meets the criteria of paragraph (d) of this section:</i> (2)(i) <i>Except as otherwise provided in paragraph (c)(2)(ii) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)</i> (ii) <i>The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:</i>
§261.3(c)(2)(ii)(A)	Spent pickle liquor sludge	(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332);
§261.3(c)(2)(ii)(B)	Waste from burning certain recycled petroleum refinery wastes	(B) Waste from burning any of the materials exempted from regulation by §261.6(a)(3)(iv) through (vi)

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§261.3(c)(2)(ii)(C)	Nonwastewater residues from HTMR processing of K061, K062, and F006	(C)(1) Nonwastewater residues, such as slag resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in paragraphs (6), (7), and (13) of the definition for "Industrial furnace" in 40 CFR 260.10), that are disposed in subtitle D units, provided that these residues meet the generic exclusion levels identified in the tables in this paragraph for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.
§261.3(c)(2)(ii)(C) (Continued)		(2) A one-time notification and certification must be placed in the facility's files and sent to the EPA region or authorized state for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the subtitle D unit receiving the waste changes. However, the generator or treater need only notify the EPA region or an authorized state on an annual basis if such changes occur. Such notification and certification should be sent to the EPA region or authorized state by the end of the calendar year, but no later than December 31. The notification must include the following information: the name and address of the subtitle D unit receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."
§261.3(c)(2)(ii)(D)	Biological treatment sludge	(D) Biological treatment sludge from the treatment of one of the following wastes listed in Sec. 261.32--organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).
§261.4(a)	Wastes excluded from the definition of solid waste	<i>§261.4(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of this part:</i>

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§261.4(a)(1)	Domestic sewage and mixture of domestic sewage	(1)(i) Domestic sewage; and (ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.
§261.4(a)(2)	Point source discharges	(2) Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended.[Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.];
§261.4(a)(3)	Irrigation return flows	(3) Irrigation return flows;
§261.4(a)(4)	Source, special nuclear or by-product material	(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.;
§261.4(a)(5)	In-situ mining waste	(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process;
§261.4(a)(6)	Reclaimed pulping liquor	(6) Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Sec. 261.1(c) of this chapter;
§261.4(a)(7)	Spent sulfuric acid	(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in Sec. 261.1(c) of this chapter;
§261.4(a)(9)	Reclaimed wood preserving solutions and wastewaters	(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and (ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.
§261.4(b)	Solid wastes excluded from the definition of hazardous waste	<i>§261.4(b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous wastes:</i>

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§261.4(b)(1)	Household hazardous waste	(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility: (i) Receives and burns only (A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources) and (B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and (ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility;
§261.4(b)(2)	Agricultural and livestock-derived fertilizer	(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers: (i) The growing and harvesting of agricultural crops (ii) The raising of animals, including animal manures;
§261.4(b)(3)	Mining overburden	(3) Mining overburden returned to the mine site;
§261.4(b)(4)	Coal and fossil fuel combustion wastes	(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste, generated primarily from the combustion of coal or other fossil fuels, except as provided by Sec. 266.112 of this chapter for facilities that burn or process hazardous waste;
§3001(b)(3)(A)(i)		§3001(b)(3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, each waste listed below shall, except as provided in subparagraph (B) of this paragraph, be subject only to regulation under other applicable provisions of Federal or State law in lieu of this subchapter until at least six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p) of section 6982 of this title and after promulgation of regulations in accordance with subparagraph (C) of this paragraph: (i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.
§261.4(b)(5)	Oil and gas exploration, development, and production wastes (Bentsen wastes)	(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy;

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§3001(b)(2)(A)		<p>§3001(b)(2)(A) (2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy shall be subject only to existing State or Federal regulatory programs in lieu of this subchapter until at least 24 months after October 21, 1980, and after promulgation of the regulations in accordance with subparagraphs (B) and (C) of this paragraph.</p>
§261.4(b)(6)	Tanning wastes	<p>(6)(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in subpart D due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:</p> <p>(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and</p> <p>(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and</p> <p>(C) The waste is typically and frequently managed in non-oxidizing environments.</p> <p>(ii) Specific waste which meet the standard in paragraphs (b)(6)(i) (A), (B), and (C) (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:</p> <p>(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.</p> <p>(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.</p>

Note 1: Regulatory citations appear in bold.

Note 2: *Italic text* designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§261.4(b)(6) (Continued)	Tanning wastes (Continued)	<p>(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.</p> <p>(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.</p> <p>(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing.</p> <p>(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrometan/retan/wet finish; and through-the-blue.</p> <p>(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.</p> <p>(H) Wastewater treatment sludges from the production of TiO₂ pigment using chromium-bearing ores by the chloride process;</p>
§261.4(b)(7)	Bevill wastes	<p>(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except as provided by Sec. 266.112 of this chapter for facilities that burn or process hazardous waste. For purposes of Sec. 261.4(b)(7), beneficiation of ores and minerals is restricted to the following activities: Crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching. For the purpose of Sec. 261.4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes:</p>

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§261.4(b)(7) (Continued)	Bevill wastes (Continued)	<p>(i) Slag from primary copper processing;</p> <p>(ii) Slag from primary lead processing;</p> <p>(iii) Red and brown muds from bauxite refining;</p> <p>(iv) Phosphogypsum from phosphoric acid production;</p> <p>(v) Slag from elemental phosphorus production;</p> <p>(vi) Gasifier ash from coal gasification;</p> <p>(vii) Process wastewater from coal gasification;</p> <p>(viii) Calcium sulfate wastewater treatment plant sludge from primary copper processing;</p> <p>(ix) Slag tailings from primary copper processing;</p> <p>(x) Fluorogypsum from hydrofluoric acid production;</p> <p>(xi) Process wastewater from hydrofluoric acid production;</p> <p>(xii) Air pollution control dust/sludge from iron blast furnaces;</p> <p>(xiii) Iron blast furnace slag;</p> <p>(xiv) Treated residue from roasting/leaching of chrome ore;</p> <p>(xv) Process wastewater from primary magnesium processing by the anhydrous process;</p> <p>(xvi) Process wastewater from phosphoric acid production;</p> <p>(xvii) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;</p> <p>(xviii) Basic oxygen furnace and open hearth furnace slag from carbon steel production;</p> <p>(xix) Chloride process waste solids from titanium tetrachloride production;</p> <p>(xx) Slag from primary zinc processing;</p>
§3001(b)(3)(A)(ii)		<p>§3001(b)(3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, each waste listed below shall, except as provided in subparagraph (B) of this paragraph, be subject only to regulation under other applicable provisions of Federal or State law in lieu of this subchapter until at least six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p) of section 6982 of this title and after promulgation of regulations in accordance with subparagraph (C) of this paragraph:</p> <p>(ii) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.</p>
§261.4(b)(8)	Cement kiln dust	(8) Cement kiln dust waste, except as provided by Sec. 266.112 of this chapter for facilities that burn or process hazardous waste;
§3001(b)(3)(A)(iii)		<p>§3001(b)(3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, each waste listed below shall, except as provided in subparagraph (B) of this paragraph, be subject only to regulation under other applicable provisions of Federal or State law in lieu of this subchapter until at least six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p) of section 6982 of this title and after promulgation of regulations in accordance with subparagraph (C) of this paragraph:</p> <p>(iii) Cement kiln dust waste.</p>
§261.4(b)(10)	UST corrective action media and debris	(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of Sec. 261.24 (Hazardous Waste Codes D018 through D043 only) and are subject to the corrective action regulations under part 280 of this chapter;

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

The following citations list exclusions and exemptions which do not directly apply to wastes themselves, but may allow exempted wastes to be placed in surface impoundments under certain conditions.

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§268.4	Surface impoundment treatment exemption	<p>§268.4(a) Wastes which are otherwise prohibited from land disposal under this part may be treated in a surface impoundment or series of impoundments provided that:</p> <ul style="list-style-type: none"> (1) Treatment of such wastes occurs in the impoundments; (2) The following conditions are met: <ul style="list-style-type: none"> (i) Sampling and testing. For wastes with treatment standards in subpart D of this part and/or prohibition levels in subpart C of this part or RCRA section 3004(d), the residues from treatment are analyzed, as specified in §268.7 or §268.32, to determine if they meet the applicable treatment standards or where not treatment standards have been established for the waste, the applicable prohibition levels. The sampling method, specified in the waste analysis plan under §264.13 or §265.13, must be designed such that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples. (ii) Removal. The following treatment residues (including any liquid waste) must be removed at least annually: residues which do not meet the treatment standards promulgated under subpart D of this part; residues which do not meet the prohibition levels established under subpart C of this part or imposed by statute (where no treatment standards have been established); residues which are from the treatment of wastes prohibited from land disposal under subpart C of this part (where no treatment standards have been established and no prohibition levels apply); or residues from managing listed wastes which are not delisted under §260.22 of this chapter. however, residues which are the subject of a valid certification under §268.8 made no later than a year after placement of the wastes in an impoundment are not required to be removed annually. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement. (iii) Subsequent management. Treatment residues may not be placed in any other surface impoundment for subsequent management unless the residues are the subject of a valid certification under §268.8 which allows disposal in surface impoundments meeting the requirements of §268.8(a). (iv) Recordkeeping. The procedures and schedule for the sampling of impoundment contents, the analysis of test data, and the annual removal of residues which do not meet the treatment standards, or prohibition levels (where no treatment standards have been established and no prohibition levels apply), must be specified in the facility's waste analysis plan as required under §264.13 or §265.13 of this chapter.

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§268.4 (Continued)	Surface impoundment treatment exemption (continued)	<p>(3) The impoundment meets the design requirements of §264.221(c) or §265.221(a) of this chapter, regardless that the unit may not be new, expanded, or a replacement, and be in compliance with applicable ground water monitoring requirements of subpart F of part 264 or part 265 of this chapter unless:</p> <ul style="list-style-type: none"> (i) Exempted pursuant to §264.221(d) or (e) of this chapter, or §265.221(c) or (d) of this chapter; or, (ii) Upon application by the owner or operator, the Administrator, after notice and an opportunity to comment has granted a waiver of the requirements on the basis that the surface impoundment: <ul style="list-style-type: none"> (A) Has at least one liner, for which there is no evidence that such liner is leaking; (B) Is located more than one-quarter mile from an underground source of drinking water; and (C) Is in compliance with generally applicable ground water monitoring requirements for facilities with permits; or (iii) Upon application by the owner or operator, the Administrator, after notice and an opportunity to comment, has granted a modification to the requirements on the basis of a demonstration that the surface impoundment is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time. <p>(4) The owner or operator submits to the Regional Administrator a written certification that the requirements of §268.4(a)(3) have been met and submits a copy of the waste analysis plan required under §268.4(a)(2). The following certification is required:</p> <p style="padding-left: 40px;">I certify under penalty of law that the requirements of 40 CFR 268.4(a)(3) have been met for all surface impoundments being used to treat restricted wastes. I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.</p> <ul style="list-style-type: none"> (b) Evaporation of hazardous constituents as the principal means of treatment is not considered to be treatment for purposes of an exemption under this section.

Note 1: Regulatory citations appear in bold.

Note 2: *Italic text* designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§3005(j)(11)		<p>§3005(j)(11)(A) If the Administrator allows a hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsections) to be placed in a surface impoundment (which is operating pursuant to interim status) for storage or treatment, such impoundment shall meet the requirements that are applicable to new surface impoundments under section 6924(o)(1) of this title, unless such impoundment meets the requirements of paragraph (2) or (4).</p> <p>(B) In the case of any hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsection) the placement or maintenance of such hazardous waste in a surface impoundment for treatment is prohibited as of the effective date of such prohibition unless the treatment residues which are hazardous are, at a minimum, removed for subsequent management within one year of the entry of the waste into the surface impoundment.</p>

Note 1: Regulatory citations appear in bold.

Note 2: *Italic text* designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§268.5	Case-by-case extensions	<p>§268.5(a) Any person who generates, treats, stores, or disposes of a hazardous waste may submit an application to the Administrator for an extension to the effective date of any applicable restriction established under subpart C of this part. The applicant must demonstrate the following:</p> <ol style="list-style-type: none"> (1) He has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste in accordance with the effective date of the applicable restriction established under subpart C of this part; (2) He has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery (e.g., recycling), or disposal capacity that meets the treatment standards specified in subpart D or, where treatment standards have not been specified, such treatment, recovery, or disposal capacity is protective of human health and the environment. (3) Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date; (4) The capacity being constructed or otherwise provided by the applicant will be sufficient to manage the entire quantity of waste that is the subject of the application; (5) He provides a detailed schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity will be available; (6) He has arranged for adequate capacity to manage his waste during an extension and has documented in the application the location of all sites at which the waste will be managed; and (7) Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of paragraph (h)(2) of this section. <p>(b) An authorized representative signing an application described under paragraph (a) of this section shall make the following certification:</p> <p>I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.</p> <ol style="list-style-type: none"> (c) After receiving an application for an extension, the Administrator may request any additional information which he deems as necessary to evaluate the application. (d) An extension will apply only to the waste generated at the individual facility covered by the application and will not apply to restricted waste from any other facility.

Note 1: Regulatory citations appear in bold.

Note 2: *Italic text* designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§268.5 (Continued)	Case-by-case extensions (continued)	<p>(e) On the basis of the information referred to in paragraph (a) of this section, after notice and opportunity for comment, and after consultation with appropriate State agencies in all affected States, the Administrator may grant an extension of up to 1 year from the effective date. The Administrator may renew this extension for up to 1 additional year upon the request of the applicant if the demonstration required in paragraph (a) of this section can still be made. In no event will an extension extend beyond 24 months from the applicable effective date specified in subpart C of part 268. The length of any extension authorized will be determined by the Administrator based on the time required to construct or obtain the type of capacity needed by the applicant as described in the completion schedule discussed in paragraph</p> <p>(a)(5) of this section. The Administrator will give public notice of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition will be published in the Federal Register.</p> <p>(f) Any person granted an extension under this section must immediately notify the Administrator as soon as he has knowledge of any change in the conditions certified to in the application.</p> <p>(g) Any person granted an extension under this section shall submit written progress reports at intervals designated by the Administrator. Such reports must describe the overall progress made toward constructing or otherwise providing alternative treatment, recovery or disposal capacity; must identify any event which may cause or has caused a delay in the development of the capacity; and must summarize the steps taken to mitigate the delay. The Administrator can revoke the extension at any time if the applicant does not demonstrate a good-faith effort to meet the schedule for completion, if the Agency denies or revokes any required permit, if conditions certified in the application change, or for any violation of this chapter.</p> <p>(h) Whenever the Administrator establishes an extension to an effective date under this section, during the period for which such extension is in effect:</p> <p>(1) The storage restrictions under Sec. 268.50(a) do not apply; and</p> <p>(2) Such hazardous waste may be disposed in a landfill or surface impoundment only if such unit is in compliance with the technical requirements of the following provisions regardless of whether such unit is existing, new, or a replacement or lateral expansion.</p> <p>(i) The landfill, if in interim status, is in compliance with the requirements of subpart F of part 265 and Sec. 265.301 (a), (c), and (d) of this chapter; or,</p> <p>(ii) The landfill, if permitted, is in compliance with the requirements of subpart F of part 264 and Sec. 264.301 (c), (d) and (e) of this chapter; or</p> <p>(iii) The surface impoundment, if in interim status, is in compliance with the requirements of subpart F of part 265, Sec. 265.221 (a), (c), and (d) of this chapter, and RCRA section 3005(j)(1); or</p>

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§268.5 (Continued)	Case-by-case extensions (continued)	<p>(v) The surface impoundment, if newly subject to RCRA section 3005(j)(1) due to the promulgation of additional listings or characteristics for the identification of hazardous waste, is in compliance with the requirements of subpart F of part 265 of this chapter within 12 months after the promulgation of additional listings or characteristics of hazardous waste, and with the requirements of sec. 265.221 (a), (c) and (d) of this chapter within 48 months after the promulgation of additional listings or characteristics of hazardous waste. If a national capacity variance is granted, during the period the variance is in effect, the surface impoundment, if newly subject to RCRA section 3005(j)(1) due to the promulgation of additional listings or characteristics of hazardous waste, is in compliance with the requirements of subpart F of part 265 of this chapter within 12 months after the promulgation of additional listings or characteristics of hazardous waste, and with the requirements of Sec. 265.221 (a), (c) and (d) of this chapter within 48 months after the promulgation of additional listings or characteristics of hazardous waste; or</p> <p>(vi) The landfill, if disposing of containerized liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm but less than 500 ppm, is also in compliance with the requirements of 40</p> <p>CFR 761.75 and parts 264 and 265.</p> <p>(i) Pending a decision on the application the applicant is required to comply with all restrictions on land disposal under this part once the effective date for the waste has been reached.</p>
§3004(h)		<p><i>§3004(h)(2) The Administrator may establish an effective date different from the effective date which would otherwise apply under subsection (d), (e), (f), or (g) of this section with respect to a specific hazardous waste which is subject to a prohibition under subsection (d), (e), (f), or (g) of this section or under regulations under subsection (d), (e), (f), or (g) of this section. Any such other effective date shall be established on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. Any such other effective date shall in no event be later than 2 years after the effective date of the prohibition which would otherwise apply under subsection (d), (e), (f), or (g) of this section.</i></p> <p>(4) Whenever another effective date (hereinafter referred to as a "variance") is established under paragraph (2), or an extension is granted under paragraph (3), with respect to any hazardous waste, during the period for which such variance or extension is in effect, such hazardous waste may be disposed of in a landfill or surface impoundment only if such facility is in compliance with the requirements of subsection (o) of this section.</p>

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§268.6	No migration petition	<p>(a) Any person seeking an exemption from a prohibition under subpart C of this part for the disposal of a restricted hazardous waste in a particular unit or units must submit a petition to the Administrator demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The demonstration must include the following components:</p> <ol style="list-style-type: none"> (1) An identification of the specific waste and the specific unit for which the demonstration will be made; (2) A waste analysis to describe fully the chemical and physical characteristics of the subject waste; (3) A comprehensive characterization of the disposal unit site including an analysis of background air, soil, and water quality. (4) A monitoring plan that detects migration at the earliest practicable time; (5) Sufficient information to assure the Administrator that the owner or operator of a land disposal unit receiving restricted waste(s) will comply with other applicable Federal, State, and local laws. <p>(b) The demonstration referred to in paragraph (a) of this section must meet the following criteria:</p> <ol style="list-style-type: none"> (1) All waste and environmental sampling, test, and analysis data must be accurate and reproducible to the extent that state-of-the-art techniques allow; (2) All sampling, testing, and estimation techniques for chemical and physical properties of the waste and all environmental parameters must have been approved by the Administrator; (3) Simulation models must be calibrated for the specific waste and site conditions, and verified for accuracy by comparison with actual measurements; (4) A quality assurance and quality control plan that addresses all aspects of the demonstration must be approved by the Administrator; and, (5) An analysis must be performed to identify and quantify any aspects of the demonstration that contribute significantly to uncertainty. This analysis must include an evaluation of the consequences of predictable future events, including, but not limited to, earthquakes, floods, severe storm events, droughts, or other natural phenomena. <p>(c) Each petition referred to in paragraph (a) of this section must include the following:</p> <ol style="list-style-type: none"> (1) A monitoring plan that describes the monitoring program installed at and/or around the unit to verify continued compliance with the conditions of the variance. This monitoring plan must provide information on the monitoring of the unit and/or the environment around the unit. The following specific information must be included in the plan: <ol style="list-style-type: none"> (i) The media monitored in the cases where monitoring of the

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REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§268.6 (Continued)	No migration petition (continued)	<p>(vii) The equipment used at the monitoring stations;</p> <p>(viii) The sampling and analytical techniques employed; and</p> <p>(ix) The data recording/reporting procedures.</p> <p>(2) Where applicable, the monitoring program described in paragraph (c)(1) of this section must be in place for a period of time specified by the Administrator, as part of his approval of the petition, prior to receipt of prohibited waste at the unit.</p> <p>(3) The monitoring data collected according to the monitoring plan specified under paragraph (c)(1) of this section must be sent to the Administrator according to a format and schedule specified and approved in the monitoring plan, and</p> <p>(4) A copy of the monitoring data collected under the monitoring plan specified under paragraph (c)(1) of this section must be kept on-site at the facility in the operating record.</p> <p>(5) The monitoring program specified under paragraph (c)(1) of this section meet the following criteria:</p> <p>(i) All sampling, testing, and analytical data must be approved by the Administrator and must provide data that is accurate and reproducible.</p> <p>(ii) All estimation and monitoring techniques must be approved by the Administrator.</p> <p>(iii) A quality assurance and quality control plan addressing all aspects of the monitoring program must be provided to and approved by the Administrator.</p> <p>(d) Each petition must be submitted to the Administrator.</p> <p>(e) After a petition has been approved, the owner or operator must report any changes in conditions at the unit and/or the environment around the unit that significantly depart from the conditions described in the variance and affect the potential for migration of hazardous constituents from the units as follows:</p> <p>(1) If the owner or operator plans to make changes to the unit design, construction, or operation, such a change must be proposed, in writing, and the owner or operator must submit a demonstration to the Administrator at least 30 days prior to making the change. The Administrator will determine whether the proposed change invalidates the terms of the petition and will determine the appropriate response. Any change must be approved by the Administrator prior to being made.</p> <p>(2) If the owner or operator discovers that a condition at the site which was modeled or predicted in the petition does not occur as predicted, this change must be reported, in writing, to the Administrator within 10 days of discovering the change. The Administrator will determine whether the reported change from the terms of the petition requires further action, which may include termination of waste acceptance and revocation of the petition, petition modifications, or other responses.</p>

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.

REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ Statutory Citation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§268.6 (Continued)	No migration petition (continued)	<p>(f) If the owner or operator determines that there is migration of hazardous constituent(s) from the unit, the owner or operator must:</p> <p>(1) Immediately suspend receipt of prohibited waste at the unit, and</p> <p>(2) Notify the Administrator, in writing, within 10 days of the determination that a release has occurred.</p> <p>(3) Following receipt of the notification the Administrator will determine, within 60 days of receiving notification, whether the owner or operator can continue to receive prohibited waste in the unit and whether the variance is to be revoked. The Administrator shall also determine whether further examination of any migration is warranted under applicable provisions of part 264 or part 265.</p> <p>(g) Each petition must include the following statement signed by the petitioner or an authorized representative:</p> <p style="padding-left: 40px;">I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.</p> <p>(h) After receiving a petition, the Administrator may request any additional information that reasonably may be required to evaluate the demonstration.</p> <p>(i) If approved, the petition will apply to land disposal of the specific restricted waste at the individual disposal unit described in the demonstration and will not apply to any other restricted waste at that disposal unit, or to that specific restricted waste at any other disposal unit.</p> <p>(j) The Administrator will give public notice in the Federal Register of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition will be published in the Federal Register.</p> <p>(k) The term of a petition granted under this section shall be no longer than the term of the RCRA permit if the disposal unit is operating under a RCRA permit, or up to a maximum of 10 years from the date of approval provided under paragraph (g) of this section if the unit is operating under interim status. In either case, the term of the granted petition shall expire upon the termination or denial of a RCRA permit, or upon the termination of interim status or when the volume limit of waste to be land disposed during the term of petition is reached.</p> <p>(l) Prior to the Administrator's decision, the applicant is required to comply with all restrictions on land disposal under this part once the effective date for the waste has been reached.</p> <p>(m) The petition granted by the Administrator does not relieve the petitioner of his responsibilities in the management of hazardous waste under 40 CFR part 260 through part 271.</p> <p>(n) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 500 ppm are not eligible for an exemption under this section.</p>

Note 1: Regulatory citations appear in bold.

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REFERENCE TABLE FOR EXCLUSIONS AND EXEMPTIONS (continued)

Regulatory/ StatutoryCitation	Exclusion or Exemption	Full Text of Regulatory/Statutory Language
§3004(d)		<p>§3004(d)(1) <i>Effective 32 months after November 8, 1984 (except as provided in subsection (f) of this section with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition on one or more methods of land disposal of such waste is not required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account - (A) the long-term uncertainties associated with land disposal, (B) the goal of managing hazardous waste in an appropriate manner in the first instance, and (C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous wastes and their hazardous constituents. For the purposes of this paragraph, a method of land disposal may not be determined to be of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section), unless, upon application by an interested person, it been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.</i></p>
§3004(h)	National capacity variance	<p>§3004(h)(2) The Administrator may establish an effective date different from the effective date which would otherwise apply under subsection (d), (e), (f), or (g) with respect to a specific hazardous waste which is subject to a prohibition under subsection (d), (e), (f), or (g). Any such other effective date shall be established on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. Any such other effective date shall in no event be later than 2 years after the effective date of the prohibition which would otherwise apply under subsection (d), (e), (f), or (g).</p> <p>(4) Whenever another effective date (hereinafter referred to as a "variance") is established under paragraph (2), or an extension is granted under paragraph (3), with respect to any hazardous waste, during the period for which such variance or extension is in effect, such hazardous waste may be disposed of in a landfill or surface impoundment only if such facility is in compliance with the requirements of subsection (o).</p>

Note 1: Regulatory citations appear in bold.

Note 2: Italic text designates the regulatory prefix for the exempted/excluded wastes which follow on the table.